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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re ELENA J., a Person Coming Under
the Juvenile Court Law.

SAN DIEGO COUNTY HEALTH AND
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

JOSEPH J.,

Defendant and Appellant.

D070682

(Super. Ct. No. J519168C)

APPEAL from an order of the Superior Court of San Diego County, Ronald L.
Johnson, Judge. Affirmed.

Monica Vogelmann, under appointment by the Court of Appeal, for Defendant
and Appellant.

Thomas E. Montgomery, County Counsel, John E. Philips, Chief Deputy County
Counsel, and Dana Shoffner, Deputy County Counsel, for Plaintiff and Respondent.

Joseph J. appeals an order terminating his reunification services at the 12-month review hearing regarding his daughter, Elena J., while continuing services for Elena's mother, Luz J. He asserts that the court abused its discretion by terminating his services. We affirm the order.

FACTUAL AND PROCEDURAL BACKGROUND

In March 2015, the San Diego County Health and Human Services Agency (the Agency) petitioned on behalf of then one-year-old Elena under Welfare and Institutions Code¹ section 300, subdivision (b), alleging that she was at substantial risk of serious physical harm due to exposure to physically violent confrontations between Joseph and Luz. The parents, who were married, had an extensive history of domestic violence. In a recent incident, they argued in a car while Luz was intoxicated from alcohol and Vicodin. Joseph restrained her from jumping out of the moving car, and he knocked her phone out of her hands to prevent her from calling police. Elena and her half siblings were in the car at the time of the incident. During another violent argument between the parents at home, Joseph and Luz sustained lacerations on their lips. They both used illegal drugs.

The court made true findings on the petition, removed Elena from parental custody, and ordered reunification services for the parents. In June 2015, Elena was placed in the home of her paternal grandfather.

In August 2015, Joseph and Luz engaged in another domestic violence incident. They got into an argument in a parking lot, she threatened to call police, and he "head

¹ Further statutory references are to the Welfare and Institutions Code.

butted" and broke her rear view mirror. Although Joseph fled the scene, he later contacted police officers. Luz obtained a restraining order against him that would expire in September 2018. The paternal grandfather, Elena's caregiver, also obtained a restraining order against Joseph.

At the contested six-month review hearing in February 2016, the Agency recommended continuation of services for both parents.² During the review period, Luz visited Elena on an almost daily basis in the paternal grandfather's home, consistently tested negative for drugs, and made some progress on her case plan. Joseph did not make substantive progress on his case plan. He completed only three sessions of domestic violence treatment before being discharged for excessive absences. Up until January 2016, he did not drug test and barely communicated with the Agency. Joseph resurfaced in January, and the Agency learned that he had checked himself into a drug rehabilitation facility in Mexico for two months in late 2015. Joseph passed an on-demand drug test and had a successful visit with Elena.

The court continued Luz's and Joseph's reunification services. The court stated that its decision to continue Joseph's services was a "very close call," directed him to address the protective issues surrounding domestic violence prior to the 12-month review date, and admonished him to make "serious progress" in the ensuing months. The court also ordered Joseph to submit to weekly drug testing.

² The hearing was contested because Elena's counsel argued in favor of terminating Joseph's services.

At the contested 12-month review hearing in June 2016, the Agency recommended terminating services for Joseph and continuing Luz's services for another six months. Luz had continued to visit Elena on a nearly daily basis, refrained from drug use, and participated in parenting and domestic violence programs. She reported to the Agency that she had filed for divorce from Joseph, that she did not have contact with him, and that she would like to return to work.

In contrast, Joseph was unavailable and unresponsive to the Agency for a majority of the review period. He was discharged from his domestic violence program again due to absences. In the single drug test the Agency managed to obtain from him, he tested positive for amphetamine and methamphetamine. Further, Joseph was arrested twice: first, on an outstanding bench warrant, and second, for violating the paternal grandfather's restraining order. Regarding the latter arrest, Joseph was verbally aggressive to the paternal grandfather, initially refused to leave his property, and then tried to flee from responding police. Joseph was jailed as a result of the incident.

In late May, Joseph admitted to the Agency that he had recently used methamphetamine and marijuana and that he had been unable to engage in services. He was dejected, homeless, and "almost lost [his] job" due to lack of transportation. At the time of the review hearing, Joseph was living in the "fields near the church" that he attended. Although his supervised visits with Elena were positive, he visited inconsistently.

The court found that the Agency had provided reasonable services to the parents and terminated Joseph's services, finding that he had not made substantive progress on

his case plan. The court continued Luz's services and set an 18-month review hearing. Joseph filed a timely appeal.

DISCUSSION

Joseph contends that the juvenile court abused its discretion by terminating his reunification services at the 12-month hearing. He principally argues that his services should have been continued together with Luz's services because dependency law favors family preservation, and his receipt of additional services could only benefit Elena.

Courts have discretion at the 12-month hearing to terminate one parent's services even if services are continued for the other parent and no selection and implementation hearing is set. (*In re Alanna A.* (2005) 135 Cal.App.4th 555, 565-566 (*Alanna A.*); see also *In re Jesse W.* (2007) 157 Cal.App.4th 49, 55-57 [terminating mother's services at six-month hearing involving minors under the age of three while continuing father's services].) The court may reasonably conclude that continuing services for one parent is warranted but that the continued provision of services for the other parent would be "fruitless." (*Alanna A.*, at p. 566.) A juvenile court maintains broad discretion to determine what would best serve and protect the child's interest, and a reviewing court will not reverse the court's order in the absence of a clear abuse of discretion. (*In re Gabriel L.* (2009) 172 Cal.App.4th 644, 652.)

In deciding whether a parent should continue receiving services past the 12-month review date, the court may consider the provisions of section 366.21, subdivision (g), regarding whether there is a substantial probability that the child will be returned to the physical custody of his or her parent and safely maintained in the home within the

extended period of time. (*Alanna A., supra*, 135 Cal.App.4th at pp. 565-566.) In that regard, the court considers whether the parent has regularly and consistently visited the child, made significant progress in resolving the problems that led to the child's removal, and demonstrated the capacity and ability to complete the objectives of his or her treatment plan and provide for the child's safety, protection, and well-being. (See § 366.21, subd. (g)(1)(A)-(C).)

Joseph has not shown that the court abused its discretion by terminating his services at the 12-month hearing. He did none of the things outlined in section 366.21, subdivision (g)(1)(A)-(C). His visits with Elena were inconsistent, he made virtually no progress in addressing the domestic violence and drug problems that led to Elena's removal, and he largely ignored the Agency or failed to comply with its requests during the review period. He was discharged a second time from domestic violence treatment and was unmotivated to learn about his protective issues. He was arrested twice within a two-month timeframe and disregarded court orders that were in place for Elena's protection.³ He continued using illegal drugs, did not have a residence, and was struggling to support himself.

Joseph relies on Luz's progress in her services, as well as his positive visits with Elena, to argue that continuing his services could benefit Elena. We are not persuaded that the juvenile court abused its discretion in terminating Joseph's services. Joseph did

³ In addition to violating the paternal grandfather's restraining order, the record reveals that Joseph had at times violated Luz's restraining order by going to the paternal grandfather's home while Luz was there visiting Elena.

not show that there was some probability, much less a "substantial" one, that Elena would be safely returned to his custody by the 18-month date. (§ 366.21, subd. (g)(1).)

"Resources available to the juvenile court are not unlimited." (*Alanna A.*, *supra*, 135 Cal.App.4th at p. 566.) The court extended Joseph's services at the six-month review date even though he had not made substantive progress on his case plan. At that time, the court carefully explained to Joseph its expectations of him. By the 12-month review date, Joseph had not complied with his case plan and had not availed himself of the offered services. In addition, it was clear that the parents would not be reconciling. Luz had filed for divorce and had a restraining order against Joseph that would not expire until 2018. The court could reasonably conclude under these circumstances that providing further reunification services to Joseph would not benefit Elena and would in fact be futile.

DISPOSITION

The order is affirmed.

AARON, J.

WE CONCUR:

HUFFMAN, Acting P.J.

HALLER, J.